

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7011 OF 2016

Gurudev Shikshan Sanstha Mukhed
Through its President Shriram Piraji
Garudkar and others .. Petitioners

Versus

The State of Maharashtra and another .. Respondents

Shri V. S. Panpatte, Advocate for Petitioners.
Shri K. D. Mundhe, A.G.P. for Respondent No. 1.
Shri M. S. Kadam, Advocate for the Respondent No. 2.

**CORAM : S. V. GANGAPURWALA AND
S. M. GAVHANE, JJ.**

DATE : 12TH OCTOBER, 2017.

FINAL ORDER :

. Mr. Panpatte, the learned counsel for petitioners submits that, on 30th November, 2015 proposal is given by the Head Master to the Education Officer Primary seeking approval to the appointment and transfer of the petitioner No. 3 from unaided to aided post. According to the learned counsel, the petitioner No. 3 was appointed on 21.07.2007 and since then is continuously working with petitioner Nos. 1 and 2. The said transfer to the aided post is permissible. The learned counsel relies on the following judgments of the Division Bench of this Court.

- (i) Order dated 12.09.2012 in Writ Petition No. 5258 of 2012 Ms. Sandhya Laxman Ghosalkar Vs. The State of Maharashtra with other connected writ petition.
- (ii) Order dated 18.02.2014 in Writ Petition No. 9173 of 2013 with other connected writ petitions.
- (iii) Order dated 16.09.2014 in Writ Petition No. 3197 of 2014.
- (iv) Order dated 17.09.2014 in Writ Petition No. 676 of 2014 with other connected writ petitions.
- (v) Judgment dated 11.10.2012 in Writ Petition No. 2960 of 2012.
- (vi) Order dated 09.10.2014 in Writ Petition No. 5978 of 2014 with other connected writ petitions.

So also rule 41 of the Maharashtra Employees of the Private Schools (Condition of Service Regulation) Rules.

2. The learned counsel for the respondent No. 2 submits that, there are large number of surplus candidates, who are required to be absorbed and thus act of transfer of the petitioner No. 3 to aided post is not permissible. The learned counsel also relies on the Circular dated 28.06.2016 to submit that, the petitioner No. 3 will have to first work as a Shikshan Sevak on the said post.

3. We have heard the learned Assistant Government Pleader also.

4. The circular dated 28.06.2016 would not apply in the

present matter as the petitioner No. 3 is transferred from unaided to aided post on 16.11.2015 i. e. prior to the said circular.

5. The aforesaid judgments referred to supra lay down that, there is no bar to transfer the Assistant Teachers from unaided to aided posts. The aspect of surplus teachers is also considered by the Division Bench of this Court in Writ Petition No. 2960 of 2012 under judgment dated 11th October, 2012.

6. Considering the above, we pass following order.

7. The respondent No. 2 shall take decision upon the proposal (Exhibit - H) page 22 of the petitioner expeditiously and preferably within three (03) months from today and shall not reject it on the ground that the petitioner No. 3 has to work as a Shikshan Sevak and further that there are surplus candidates available. The writ petition accordingly is disposed of. No costs.

[S. M. GAVHANE, J.]

[S. V. GANGAPURWALA, J.]